

April 30, 1990

CONFIDENTIAL

Attorney-Client Communication

REPORT TO HONORABLE MAYOR

AND CITY COUNCIL AND THE

REDEVELOPMENT AGENCY OF SAN DIEGO

STATUS OF LITIGATION CONCERNING THE HYDROCARBON PLUME LOCATED IN
THE MARINA REDEVELOPMENT AREA

BACKGROUND

On February 6, 1990, you authorized a lawsuit by The City of San Diego ("City") and the Redevelopment Agency of The City of San Diego ("Agency") regarding cost recovery and remediation of the hydrocarbon plume ("plume") located in the Marina Redevelopment Area. The Centre City Development Corporation ("CCDC") was also named as a plaintiff in the lawsuit because it was the entity that had been actively working to resolve the problems surrounding the plume on behalf of the Agency.

As you were told in prior briefings, the lawsuit originally contemplated naming twenty-two defendants. The law firm of Morrison & Foerster ("Special Counsel") was able to obtain tolling agreements from thirteen of the potential defendants so that nine were actually listed as defendants at the time the lawsuit was filed.

CURRENT STATUS

Since the last time you were briefed on the litigation (March 13), Special Counsel has directed itself to two primary areas in regards to the litigation. First, they have conducted a series of meetings with the four entities named in Clean-up and Abatement Orders issued by the Regional Water Quality Control Board ("RWQCB"). The purpose of these meetings has been to see if the parties could agree to an overall free product clean-up strategy with the costs of carrying out any remediation plan spread out equitably among them. All the parties have now tentatively agreed upon such a plan and are in the process of finalizing an agreement memorializing their understanding.

Second, Special Counsel have obtained tolling agreements from the nine defendants named in the lawsuit. This is significant in that it allows for negotiations to be carried on apart from litigation. Accordingly, Special Counsel dismissed the lawsuit without prejudice two weeks ago, as the "fast track" rules for

the San Diego County Superior Court system would have rapidly forced the case into active litigation. The dismissal does not limit the City's or the Agency's rights in this matter and the litigation can be refiled if the situation warrants such action. In the meantime, we shall continue to monitor these negotiations, the status of the case, and advise you accordingly.

Respectfully submitted,

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City Attorney

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